

# **EXHIBIT C**

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF MASSACHUSETTS

4  
5 IN RE: NEW ENGLAND COMPOUNDING ) MDL NO. 13-02419-RWZ  
6 PHARMACY CASES LITIGATION )  
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BEFORE: THE HONORABLE RYA W. ZOBEL

**STATUS CONFERENCE**

John Joseph Moakley United States Courthouse  
Courtroom No. 12  
One Courthouse Way  
Boston, MA 02210

June 19, 2014  
2:40 p.m.

Catherine A. Handel, RPR-CM, CRR  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way, Room 5205  
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1 Sobol previously addressed.

2 THE COURT: Let me talk about 8(a) for a moment.

3 As I understand it, the issue -- one of the issues  
4 has to do with some reference to the bankruptcy court, and I  
5 wonder why it would not be possible to allow the rest of the  
6 motion subject to the trustee and the plaintiffs working out a  
7 procedure for dealing with the settlement funds in the  
8 bankruptcy case.

9 MR. SOBOL: If I may, your Honor. I want to make  
10 sure we identify the issues and then I think I'll answer your  
11 question.

12 So, one of the two fundamental issues in that motion  
13 is at what point are funds segregated from contributions to be  
14 set aside for a common-benefit fate.

15 A separate issue has been raised by the creditor's  
16 committee as to whether or not they want to be entitled to  
17 some money and have a shadow of the PSC or something like  
18 that. So, I'm not going to address the second of those two.

19 With respect to the first of those two issues, as a  
20 practical matter, since we're this far down the road, I  
21 think -- speaking candidly, I think that it almost makes  
22 inevitable, at least as to the funds that are being made  
23 available by NECC and the insiders, that those funds will  
24 likely be set aside from a tort trust created as a part of the  
25 bankruptcy plan.

1           So, my earlier view that -- much early on that we  
2           should segregate the money before it even pours into the  
3           bankruptcy at all, but given the pendency of time, I think  
4           that's the way it should now go. So, I think you're right.  
5           With respect to the first of those two issues, the PSC would  
6           work out with the -- with Mr. Moore and his office how -- an  
7           agreement about how that money should be set aside in the tort  
8           trust for those purposes.

9           THE COURT: Right.

10          MR. SOBOL: The second of those two issues remains  
11          under advisement with you and I won't address unless you would  
12          like to. So, the second issue on this issue being -- which,  
13          again, has been raised by the creditor's committee, the  
14          creditor's committee sees itself as wanting to have some -- a  
15          ruling by you now that they have some entitlement to the  
16          money, and the PSC's position being --

17          THE COURT: Well, I don't think that has anything to  
18          do with this particular issue. I mean, the amount of money  
19          that is being set aside under this motion, as I understand it,  
20          is something like eight percent.

21          MR. SOBOL: Correct.

22          THE COURT: It is not a final determination that  
23          eight percent will be used for these purposes. It's simply a  
24          set-aside with the final judgment to be made later so that it  
25          ultimately becomes available. So, I don't understand why

1 anybody should object to that.

2 And I understand that certain rules as to how this  
3 was to be done and what needed to be done in order to be a  
4 proper claimant for the eight percent, or whatever, has  
5 already been made, and I would think that everybody who wants  
6 to make a claim to this money will need to follow those rules.

7 MR. SOBOL: That is the position of the PSC. In  
8 order words --

9 THE COURT: Well, I don't know who objects to that.

10 MR. COREN: Your Honor, Michael Coren, on behalf  
11 creditor's committee.

12 Your Honor, in working out the different -- one,  
13 we're not a shadow of PSC. We're a statutory committee with  
14 statutory obligations by Congress. We have equal dignity to  
15 the Article III PSC in terms of the issues that we have to  
16 address.

17 There is overlap. There are times that the lawyer  
18 representatives of the committee members do work that is  
19 common-benefit work and that should have the same, equal  
20 consideration before the Court on that allocation. If it's a  
21 common benefit bestowed, it's a common benefit bestowed.

22 As I argued before, there is some overlap. It's  
23 unfortunately necessary, but there are obligations that the  
24 committee has to do and that committee member is one of the  
25 attorneys, such as myself or Anne Andrews, the other co-chair,

1 and many other committee members that were doing work and it  
2 gives a common benefit. It bestows a common benefit.

3 For example, the affidavit that was presented to you  
4 yesterday in connection with that Premier rose out of  
5 committee obligations. That's why I was the affiant or the  
6 declarant --

7 THE COURT: I don't understand exactly what you want.

8 MR. COREN: What it is, is that where we -- that our  
9 time that bestows a common benefit gets equal consideration to  
10 the PSC members.

11 The difference that we have between Mr. Sobol and the  
12 committee is who assigns the committee members. The committee  
13 has a statutory obligation and the members of the committee  
14 allocate who does what and, therefore, to the extent that we  
15 are doing work consistent with the obligations that we have as  
16 committee members, that is the assignment of the work and that  
17 gets equal consideration.

18 THE COURT: But -- I mean, this motion isn't asking  
19 for a distribution of this fund. It is simply asking for a  
20 set-aside so that money will be available for distribution on  
21 whatever basis is the appropriate basis to make such  
22 distribution to counsel.

23 MR. COREN: Yes, and I agree with you there.

24 There's a couple of wrinkles, though, in the PSC's  
25 order where our time -- the common-benefit work by the

1 committee doesn't get considered unless Mr. Sobol is the one  
2 who assigns it, and that infringes upon the statutory  
3 committee's obligation to do its management and that's why we  
4 object.

5 THE COURT: I don't understand why that has to be  
6 resolved now in connection with the set-aside and if there's  
7 language in the order setting aside that says that, which I  
8 didn't see, frankly, then maybe that should come out. I mean,  
9 the set-aside is simply to make sure the money is there.

10 I do think, however, to the extent that the  
11 creditor's committee adds to the funds and does various things  
12 that would entitle it ultimately to a recovery from that fund,  
13 I think that they need to follow the already-existing order as  
14 to the documentation of their claim.

15 MR. COREN: In terms of time keeping, that's fine, as  
16 long as we're able to do a catch-up, your Honor, and we would  
17 ask for that leave.

18 MR. SOBOL: If I may, your Honor.

19 THE COURT: Well, the order as to how it's to be done  
20 has been in existence for some long period of time, early  
21 orders of Judge Saylor.

22 MR. COREN: At a time where we were working -- where  
23 we were working out how the two committees were going to work  
24 together. There was an operating agreement there and we feel  
25 that -- what we're suggesting is that we do our own

1 assignments and submit the time. It's consistent with the  
2 agreement that was worked out with the PSC. It's part of the  
3 motion papers submitted to your Honor.

4 THE COURT: Okay. Well, it seems to me that it's  
5 time to set aside, and to the extent that there are particular  
6 funny little wrinkles, let me know within a week or two how  
7 you want me to handle those, but I think they need to be  
8 handled and I do believe that Judge Saylor's order made very  
9 early in this litigation should probably cover the manner in  
10 which ultimately distributions are done and the underlying  
11 reason for getting distribution should be in accordance with  
12 that order.

13 So, I am in general allowing the motion, which is  
14 Docket No. 790. I will not now sign an order until you  
15 present one that you can all agree to.

16 MR. COREN: Very well, your Honor. Thank you.

17 THE COURT: Okay. Ms. Johnson, you're next.

18 MS. JOHNSON: So, we've dealt with 8(a) and 8(b),  
19 your Honor.

20 I think for today's purposes, there are a series of  
21 motions that you heard yesterday. We don't need to address  
22 those, unless your Honor --

23 THE COURT: And 8(a) we've already dealt with, too,  
24 haven't we?

25 MS. JOHNSON: Yes, that's correct.